

APPENDIX "D"

AMENDED PLAN PROVIDING FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS IN THE WESTERN DISTRICT OF TEXAS

This plan for the random selection of grand and petit jurors in this district is hereby adopted subject to the approval of the Reviewing Panel of the Fifth Circuit Judicial Council as required by the Jury Selection and Service Act of 1968 and the Jury System Improvements Act of 1978 (Title 28 U.S.C. Sections 1861, et. seq.)

POLICY

It is the policy of this Court that all litigants in any division of this district entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community wherein this Court convenes; and that all citizens shall have the opportunity to be considered for service on grand and petit juries and shall have an obligation to serve as jurors when summoned for that purpose. However, under unusual or exigent circumstances, and upon approval by the chief judge, nothing herein shall preclude a grand jury exclusively drawn and empaneled in one division of this district from considering a matter chargeable in any division of this district provided that the borders of said divisions abut or are contiguous to each other. The use of the word "Court" in this plan shall contemplate the Chief Judge of this district, or any judge assigned by the Chief Judge to a particular division by order duly filed in such division and made a part hereof. The phrase "Chief Judge of this district" wherever used in this plan shall mean the Chief Judge of this district, or in the event of his absence, disability, or inability to act, the active District Judge who is present in the district and has been in service for the greatest length of time.

DISCRIMINATION PROHIBITED

No citizen shall be excluded from service as a grand or petit juror on account of race, color, religion, sex, national origin, or economic status.

MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

The Clerk of this Court or any authorized Deputy Clerk is empowered to manage the jury selection process in the various divisions of this district under the general supervision and control of the Chief Judge of this district, who will perform all duties imposed upon him which

cannot be lawfully delegated in accordance with the provisions of the Jury Selection and Service Act of 1968. The counties comprising the various divisions of this district are as follows:

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| (1) | AUSTIN DIVISION: | Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington and Williamson. |
| (2) | DEL RIO DIVISION: | Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde and Zavalla. |
| (3) | EL PASO DIVISION: | El Paso. |
| (4) | PECOS DIVISION: | Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward and Winkler. |
| (5) | SAN ANTONIO DIVISION: | Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real and Wilson. |
| (6) | WACO DIVISION: | Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson and Somervell. |
| (7) | MIDLAND-ODESSA DIVISION: | Andrews, Crane, Ector, Martin, Midland and Upton. |

RANDOM SELECTION FROM VOTER REGISTRATION LISTS

The random selection of names of prospective jurors to serve on grand and petit juries from the voter registration lists of the counties comprising each division may be made by the Clerk, any authorized deputy clerk, or any other person authorized by the Court to assist the Clerk either manually or through the use of a properly programmed electronic data processing system or device, or through a combination of manual and computer methods. This plan is based on the conclusion and judgment that the policy, purpose, and intent of the Jury Selection and Service Act of 1968 will be fully accomplished and implemented by the use of voter registration lists, as supplemented by the inclusion of subsequent registrants to the latest practicable date, as the source of an at-random selection of prospective grand and petit jurors who represent a fair cross-section of the community. This determination is supported by all the information this Court has been able to obtain after diligent effort on its part and after full consultation with the Fifth Circuit Jury Working Committee and the Judicial Council of the Fifth Circuit.

As required by the Judicial Conference of the United States, the Clerk will submit a report to the Court within six months after each periodic refilling of the master jury wheel giving general data relating to the master jury wheel, the date the master jury wheel was last filled, the source and number of names placed in the wheel and related information, an analysis of a random sampling of race and sex of a minimum of 500 completed and returned qualification forms, and an analysis of a random sampling of race and sex of a minimum of 500 names drawn from the qualified jury wheel. Also, within nine months after the master jury wheel is refilled the Clerk will provide the Court with a comparison of jury wheel data against census information. These reports will be retained by the Court as one of the jury wheel records.

DISCLOSURE OF NAMES OF JURORS

In each division of this district, the names of prospective grand jurors and/or petit jurors drawn from the Qualified Jury Wheel shall not be disclosed prior to the date of appearance and qualification of such jurors, unless otherwise directed in a division by the Chief Judge of this district, or by the judge assigned by the Chief Judge to that particular division by appropriate order; provided, however, the Court in any case may keep such names confidential for such period of time as the interest of justice may require. "Shall be disclosed" means shall be kept on file with the Clerk of the Court as a public paper.

QUALIFICATIONS TO SERVE

Any person shall be deemed qualified to serve on grand and petit juries in this Court unless he: (1) is not a citizen of the United States eighteen years of age who has resided for a period of one year within the judicial district or (2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form; or (3) is unable to speak the English language; or (4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service, or (5) has a charge pending against him for the commission of, or has been convicted in a State or Federal Court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored. In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

EXCLUSIONS OR EXCUSES FROM JURY SERVICE

Except as provided herein, no person or class of persons shall be disqualified, excluded, excused or exempted from service as jurors; provided, that any person summoned for jury service may be (1) excused by the Court, upon a showing of undue hardship or extreme inconvenience, for such period as the Court deems necessary, at the conclusion of which such person shall be summoned again for jury service, or (2) excluded by the Court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the Court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. Any exclusion pursuant to clause (5) shall be in accordance with Section 1866(c) of Title 28 U.S.C. Whenever a person is dis-qualified, excused, exempted or excluded from jury service, the Clerk shall note in the space provided on the juror's qualification form the specific reason therefor. Jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members will not be inconsistent with the Act, and shall be granted upon individual request:

- (1) Persons over seventy (70) years of age.
- (2) Persons who have, within the past two (2) years, served on a federal grand or petit jury.
- (3) Persons having active care and custody of a child or children under ten (10) years of age whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of aged or infirm persons.
- (4) All physicians, dentists, registered nurses, and attorneys engaged in actual practice.
- (5) All members of the clergy engaged in the active discharge of their ministerial duties.
- (6) Persons who serve without compensation as a volunteer firefighter or member of a rescue squad or ambulance crew for a federal, state or local government agency.
- (7) Federal Law Enforcement Officers such as members of the Federal Bureau of Investigation, Postal Inspectors, Customs Agents, members of the United States Border Patrol, United States and Deputy United States Marshals, etc.

EXEMPTIONS FROM JURY SERVICE

The exemption of members of the following occupational classes or groups of persons is in the public interest, consistent with law, and accordingly members of such groups are barred from jury service;

- (1) Members in active service in the Armed Forces of the United States;
- (2) Members of the fire or police departments of the State or any subdivision thereof;
- (3) Public officers in the executive, legislative or judicial branches of the government of the United States or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties.

MASTER JURY WHEEL

The Clerk shall provide for a Master Jury Wheel into which the names of those selected at random in each division shall be placed. The total number of names placed in the Master Jury Wheel for each division shall be as reflected on Exhibit A attached hereto and made a part hereof for all purposes, but in no event shall the number of names for any division be less than one thousand (1,000). The court may order additional names to be placed in the Master Jury Wheel as and when needed. From time to time, as directed by the Court, the Clerk in any division shall publicly draw at random from the Master Jury Wheel the names of as many persons as may be required for jury service. The Clerk shall mail to every person whose name is so drawn, a juror qualification form, with instructions to fill out and return the form, duly signed and sworn, to the Clerk by mail within ten (10) days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In drawing the names, allowance should be made for the possibility that some forms will not be returned, that some individuals may be exempt by law, and that others may not be able to comply with the statutory qualifications. Any person who fails to return a completed juror qualification form as instructed may be summoned by the Clerk to appear and fill out such a form: provided, that any person who returns an executed juror qualification form by mail, and who is subsequently summoned for jury service, may be required at the time of his appearance to fill out another juror qualification form in the presence of the Clerk. Any person who fails to appear as directed, or who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror, shall be subject to the provisions of Section 1864(b) of Title 28 U.S.C. The Master Jury Wheel shall be emptied and refilled, pursuant to the procedure set forth in the Plan, not later than September 1, 1981; and thereafter every two years between January 1 and September 1.

JUROR QUALIFICATION FORM

The juror qualification form shall elicit the information contemplated by the questions reflected on the form prescribed by the Administrative Office of the United States Courts, pursuant to Section 1869(h) of Title 28, U.S.C. Upon recommendation of the Clerk, or on its own initiative, the Court shall determine solely on the basis of information provided on the juror qualification form, and other competent evidence, whether a person is unqualified for, or exempt, or to be excused or excluded from jury service, and such determination shall be entered by the Clerk in the space provided on the juror qualification form.

QUALIFIED JURY WHEEL

The names of grand and petit jurors for each division shall be publicly drawn at random as defined in 28 U.S.C. 1869(k), and in a manner as prescribed in Exhibit B, from the Qualified Jury Wheels containing the names of not less than 300 qualified persons in such division at the time of each drawing. Into such wheel shall be placed from time to time as needed the names of persons drawn from the Master Jury Wheel, who are deemed to be qualified as jurors and not exempted or excused. The Qualified Jury Wheel shall be emptied and refilled, pursuant to the procedure herein prescribed, after the Master Jury Wheel has been emptied and refilled but not later than October 1, 1981 and thereafter every two years between January 1 and October 1. Prospective jurors in each division may be summoned separately to serve exclusively as either grand or petit jurors; or prospective jurors may be summoned to appear at the same time for later assignment to either the grand jury or the petit jury panel, in which latter event, the Clerk shall in open court and in the presence of all jurors, draw at random from a box containing the names of all persons summoned for service as either grand or petit jurors, a sufficient number to be then and there sworn as grand jurors, and the remainder shall be sworn as petit jurors. In either event, the Clerk shall prepare a separate list of names of persons assigned to grand and petit juries. When the Court orders a grand and/or petit jury to be drawn for any division or divisions, the Clerk shall issue summonses for the required number of jurors. Service of summonses may be made by personal service, first class mail, or by registered or certified mail. If service is to be made by first class mail or by registered or certified mail, the summonses may be served by the Clerk or his duly designated deputy who shall make affidavit of service. If service is effected by registered or certified mail the addressee's receipt shall be filed with the affidavit of service. Nothing herein precludes the Marshal from making service by registered or certified mail provided that the Marshal attach to his return the addressee's receipt for the registered or certified mail. Any unanticipated shortage of petit jurors can be supplied only by drawing the names of additional jurors from the Qualified Jury Wheel for that division. A Grand Jury drawn and empaneled in one division of this district may consider cases triable in any division of this district provided that the borders of said divisions abut or are contiguous to each other.

This amended plan shall become effective upon the approval of the reviewing panel as required by 28 U.S.C. §1863(a) at which time a copy shall be filed with the Clerk in each division of the district.

EXHIBIT "A"

To arrive at the total number of names to be placed in the Master Jury Wheel at each division of the Court, the Clerk, or any authorized deputy, will add together the total number of registered voters for the particular division. The number taken as the total for each county will be based on the official count of voters registered by county. The Clerk, with the approval of the Court, will determine the number of names needed for the Master Jury Wheel and will divide the total number of names on the voter registration lists by the number needed.

The result is referred to herein as the "quotient." For example, if the total number of names on the voter registration lists at a particular division point is 320,000 and it is determined that 8,000 names are needed for the Master Jury Wheel, the "quotient" would be 40 and the Clerk would therefore take every fortieth registered voter's name for the Master Jury Wheel.

Electronic data processing methods may be used by the Clerk for selecting and copying names from the voter registration lists of those counties that maintain these lists in machine readable forms such as punched cards, magnetic tapes, or magnetic discs. In smaller counties currently maintaining their voter lists in handwritten or printed form, the Clerk may employ a combination of methods whereby names are initially selected from the voter list manually and then recorded by electronic machine methods. In lieu of making an actual, physical count of names on those voter lists where names are to be selected manually, a measuring device that expresses name intervals in terms of inches of space on a page may be used providing it substantially approximates the desired "quotient" intervals between selected names that an actual count would produce.

After determining the "quotient," the Clerk shall establish a starting number by preparing paper slips, each reflecting a different number from one to the same number as the "quotient." The numbers shall then be placed in an appropriate box and thoroughly mixed, after which one number shall be publicly drawn at random. This number will locate on the voter registration list the first name to be selected. The same starting number will be used on the voter registration list of each county in the division. If additional names are from time to time needed for the Master Jury Wheel in any division, they may be obtained by repeating the foregoing procedure using the same voter registration list, except that the numbered slip or slips previously used shall be eliminated and a new beginning number shall be publicly drawn from the box at random.

EXHIBIT "B"

Upon receipt of an order to draw the names of prospective grand and petit jurors from the qualified jury wheel, the Clerk will post a public notice of the date and time for calculating an increment number and selecting a starting number for the first name to be selected from the qualified wheel.

The increment number will be determined by dividing the total number of names remaining in the qualified wheel by the number of prospective jurors to be summoned.

The starting number will be publicly drawn at random from slips of paper numbered consecutively from one (1) through the increment number plus the remainder group.

For example, if there are 2,250 names in the qualified jury wheel and a panel of 85 jurors is to be summoned, the increment number would be 26 ($2,250 \div 85 = 26.47$). The remainder group is determined by multiplying the increment number (26) by the number of jurors to be summoned (85) and subtracting the result (2,210) from the number of jurors in the qualified jury wheel (2,250). The remainder equals 40. Therefore, the range of numbers for selecting a starting number would be 1 through 66 ($26 + 40 = 66$). Accordingly, if the starting number of five (5) was randomly drawn, jury selection would start with the fifth name in the qualified wheel and the Clerk would select every 26th name from the qualified wheel until 85 jurors' names are selected.

Electronic data processing methods may be used by the Clerk for selecting the names of prospective grand and petit jurors from the qualified jury wheels.